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January 20, 1939

Hon. George Van Fleet
Actuary of Board
Board of Insurance Commissioners
Austin, Texas

Dear Mr. Van Fleet:

Opinion No. 0-89
Re: Construction of Article 7064a
and Article 4769, Revised Civil
Statutes - Taxability of consi-
derations paid for annuities.

Your question for an opinion upon the question:

"Whether or not considerations paid to a
Texas life insurance company for annuities on
the life of or purchased by a citizen of Texas
are taxable under Article 7064a, Title 78, in
view of Article 4769."

has been received by this office.

Article 7064a reads as follows:

"Occupation tax; life, health and accident
insurance premiums; report; exception; deduction;
domestic companies. - Every group of individuals,
society, association, or corporation, domiciled
in the State of Texas, transacting the business
of life, accident or life and accident, health
and accident insurance for profit, or for mutual
profit or protection, shall at the time of filing
its annual statement, report to the Commission of
Insurance the gross amount of premiums received
from or upon the lives of persons residing or
domiciled in this state during the preceding year

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and each of such groups of individuals, society, association, or corporation shall pay an annual tax of one-half of one percent of such gross premium receipts provided, however that this tax shall not apply to local mutual aid associations, or fraternal or benefit societies or organizations. Etc....."

Article 4769, Revised Civil Statutes of Texas, reads as follows:

"Report of gross receipts. - Each life insurance company not organized under the laws of this state, transacting business in this state, shall annually on or before the first day of March, make a report to the Commissioner, which report shall be sworn to by either the president or vice-president and secretary or treasurer of such company, which shall show the gross amount of premiums collected during the year ending on December 31st, preceding, from citizens of this state upon policies of insurance. Etc....."

The case of Daniel et al vs. Life Insurance Company of Virginia, 102 SW (2nd) 257, cited by you in your letter, holds:

"Considerations paid by annuity contracts are not premiums on policies of insurance, within statute levying occupation tax on foreign life insurance companies doing business in state measured by gross amount of such premiums collected from citizens of this state."

You will note that the title of Article 7064a quoted above is as follows:

"Occupation tax; life, health and accident insurance premiums; reports, exceptions; deductions; domestic companies."

You are, therefore, respectfully advised that it is the opinion of this Department that considerations paid to a Texas life insurance company for annuities on the life of or

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purchased by a citizen of Texas are not insurance premiums
and are not taxable under Article 7064a, Revised Civil Sta-
tutes of the State of Texas.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

H. J. Janning
Assistant

WJF:AW

APPROVED:

Gracib. Mann
ATTORNEY GENERAL OF TEXAS *mgh*